

SALES TAX

INFORMATION BULLETIN #55

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Disclaimer: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the subject matter covered herein.

SUBJECT: APPLICATION OF SALES TAX TO SALES OF UTILITIES USED IN MANUFACTURING OR PRODUCTION

Indiana Code 6-2.5-4-5 provides that a power subsidiary or person engaged as a public utility is not a retail merchant making a retail transaction when it sells electrical energy, natural or artificial gas, water, steam, or steam heat to a person for use in manufacturing, mining, production, refining, oil extraction, mineral extraction, irrigation, agriculture, or horticulture. (Note this exclusion does not apply to utilities used in processing another's product. E.G., one who mills machinery for another does not receive this exclusion.)

Sales and use tax is imposed when property is acquired from a retail merchant in a retail transaction. Since this law excludes utility sales, for the listed uses, from being retail transactions, they cannot be subject to sales or use tax. This exclusion applies when the sales of the utility are (1) by public utilities or power subsidiaries, (2) used in manufacturing, production, etc., and (3) either separately metered or predominately used in an excluded manner.

PUBLIC UTILITIES

A public utility is defined as any organization engaged in furnishing electrical energy, natural or artificial gas, water, steam, or steam heating and having the right of eminent domain or subject to government regulation in connection with the furnishing of public utility services. Only electricity, natural or artificial gas, water, steam, and steam heat are included. Fuel, fuel oil, gasoline, coal, liquid propane, and any other utility not listed are not included in this exclusion.

USED IN MANUFACTURING, PRODUCTION, ETC.

Use in manufacturing or one of the other listed production processes begins at the point of the first operation or activity constituting part of an integrated production process and ends at the point that the

production process has altered the item to its completed form, including packaging, if required. To qualify for the exemption, the listed utility must be consumed as an essential and integral part of an integrated process which produces tangible personal property.

In general, utilities will meet test to the extent that they power equipment used as an essential and integral part of an integrated production process. Therefore, the provisions of 45 IAC 2.2-5-8 through 2.2-5-11, which govern the exemption for production machinery is exempt. In addition, utility service used to operate equipment which controls the environment so production can occur is exempt.

EXAMPLE:

An air make up unit is used in finishing rooms as part of a wood manufacturing process. A unit consists of fans, filters, heaters, and duct work which control air purity, temperature, and humidity and prevent particles and excess solvents from accumulating in the air and ruining the wood finish. The unit also creates an air flow that promotes the drying of the finish. Under 45 IAC 2.2-5-4-5 if the other statutory conditions listed above are met.

EXAMPLE:

The taxpayer produces computer chips in a clean room environment. Specially designed air handling equipment controls the temperature, humidity, and air particulate levels in the clean room. Production of the computer chips could not occur unless these conditions are carefully controlled. Because the air handling equipment is an essential and integral part of conjunction with such equipment are nontaxable.

EXAMPLE:

The taxpayer is a restaurant that purchases electricity used to power air conditioning and ventilating equipment. The equipment environmentally conditions the kitchen area of the restaurant. The equipment is not exempt under 45 IAC 2.2-5-8 through 45 IAC 2.2-5-11 because it does not operate in an integrated fashion with the food production process and is not essential to making that process possible. Consequently, the electricity used in conjunction with that equipment is not exempt under Indiana Code 6-2.5-4-5.

Manufacturing or production does not include maintenance, servicing, or repairing of equipment, or testing, handling, shipping, receiving, or storing the finished product. (Utilities used for testing during the production process are exempt.) Utilities used for general space heating or air conditioning, general lighting (including security lighting), movement of goods outside the production process, in offices, or in providing for employee health or comfort are taxable.

Restaurant food heating or cooling is taxable unless it is used in the actual production and creation of the food. Utilities used for warming tables and refrigeration areas are taxable unless the food is undergoing a change due to this process. Refrigeration for storage is a taxable use of the utilities.

EXAMPLE:

Utilities serving a freezer used only in making ice cream or a fryer used for cooking would be exempt. Utilities serving a refrigerator or heat lamp used to keep the products or the raw materials in the same condition are taxable.

SEPARATELY METERED OR PREDOMINATELY USED

The exclusion from sales tax only applies if non-taxable utilities are separately metered, if they are predominately used by the purchaser for the excepted uses. ~~APredominately used~~@means more than 50% of the utilities are consumed for the exempted use. Each meter is considered separately to determine if the utility measured is exempt. If a user has multiple meters, they will not be lumped together for a determination of predominate use, but each will be considered separately.

PARTIAL EXEMPTIONS

Any user who does not meet the predominate use test and industrial processors may qualify for partial exemption under Indiana Code 6-2.5-5.1 for utilities which are directly consumed by the purchaser in the direct production of tangible personal property in the purchaser's business or manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. Fuel oil, gasoline, coal and other types of fuel may also be exempt to the extent they are directly consumed by the purchaser in direct percentage of utilities qualified, NOT for the entire amount of billings. All sales tax must first be paid to the utility and a claim for refund with documentation submitted to the department on a calendar year basis.

FORMS

To receive an exclusion, the taxpayer must complete Form ST-200. The form will be reviewed by the department and, if the meter qualifies for the exemption, a validated ST-109 will be sent to the taxpayer to be forwarded to the utility company. The ST-109 is the only exemption form that can be accepted by a utility to exempt the utility from collecting the Indiana sales tax. Applications for exemptions (ST-200) are available from the Indiana Department of Revenue, Compliance Division, Room 208, State Office Building, Indianapolis, Indiana, 46204. Telephone: (317) 232-2330.

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Commissioner